

STEPHANIE CAMPBELL,)
)
 Plaintiff,)
) Civil Action No. 4:21-cv-00557-RK
 v.)
)
 GANNETT COMPANY, INC., et al.,)
)
 Defendants.)

Defendants Gannett Co., Inc. (“Gannett”), and the other Defendants herein, all of whom are affiliates of Gannett, by and through undersigned counsel, pursuant to Fed. R. Civ. P. 56, move for summary judgment as to all claims asserted against them in Counts I, II and III of Plaintiff’s Complaint for the reason that Defendants’ use of the subject copyrighted photograph was a fair use under 17 U.S.C. § 107. In support of this Motion, Defendants state:

1. This is an action alleging infringement of Plaintiff’s copyright in a photograph (the “Sowers Photo”). Plaintiff licensed the Sowers Photo for use in a National Football League Super Bowl commercial for Microsoft, requiring no attribution or other credit, and the resulting commercial included no attribution.

2. Microsoft, through its ad agency, asked that Defendant USA Today, a newspaper and news media website owned by Gannett, include the commercial in its Ad Meter program, along with 61 other Super Bowl commercials wherein persons can rate the commercials. USA Today promotes the program in its newspaper and through its content management system in its USA Today news network websites. So readers can view the commercials, a representative screenshot was used as a link to play them, and a USA Today producer chose the Sowers Photo as

a screenshot link for viewing the commercial, and the remaining Defendant publications downloaded the screenshot and commercial to their websites. Plaintiff claims this infringed her copyright (Cmplt. Counts I-III) and that Defendants used the photograph after removing her name from it (Count IV).

3. Because Defendants' use of the screenshot of the Sowers Photo was sufficiently transformative in that it facilitated comment and criticism about the commercial and served a different and functional purpose than the original photo, and because it had no significant effects on the marketability of the photo, Defendants' use constituted fair use as a matter of law under 17 U.S.C. § 107. For that reason, this Court should grant summary judgment for Defendants on Counts I, II and III of Plaintiff's Complaint.

4. In support of this Motion, and in accordance with W.D.Mo. L.R. 56.1(a), Defendants file concurrently herewith their Statement of Uncontroverted Material Facts, with attached exhibits, and their Suggestions in Support.

WHEREFORE, Defendants respectfully request that the Court enter an Order granting this Motion, granting summary judgment in their favor and against Plaintiff on all claims asserted by her in Counts I, II, and III of Plaintiff's Complaint, dismissing each such claim with prejudice, and granting such additional relief the Court deems equitable, just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 6th day of January, 2023, a true copy hereof was served upon the following counsel of record, via e-mail, and that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

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